

Part III – Administrative, Procedural, and Miscellaneous

Communications Excise Tax; § 4251

Notice 2005-79

The government's recent loss in American Bankers Ins. Group v. United States, 408 F.3d 1328 (11th Cir. 2005), rev'g 308 F. Supp. 2d 1360 (S.D. Fla. 2004), has caused some to question the continued applicability of the communications excise tax imposed by § 4251 of the Internal Revenue Code.

The government did not seek review by the United States Supreme Court in American Bankers Insurance Group. Nevertheless, the government will continue to litigate this important issue. The government is prosecuting appeals in five different circuits. The appeal in Office Max v. United States, 309 F. Supp. 2d 984 (N.D. Ohio 2004), has been briefed and argued, and the parties are awaiting a decision.

This notice confirms that the Service will continue to assess and collect the tax under § 4251 on all taxable communications services, including communications services similar to those at issue in the cases. Collectors should continue to collect the tax, including from taxpayers within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit.

Persons paying for taxable communications services (taxpayers) are required to pay the tax to a collecting agent (the person receiving the payment on which tax is imposed), and collecting agents are required to pay over the tax to the United States Treasury and to file the required returns. Taxpayers may preserve any claims for overpayments by filing administrative claims for refund with the Service pursuant to § 6511. Taxpayers are advised, however, that these claims, including claims for which appellate venue would lie in the United States Court of Appeals for the Eleventh Circuit, will not be processed while there are pending cases in other United States Courts of Appeals.

EFFECT ON OTHER DOCUMENTS

Notice 2004-57, 2004-34 I.R.B. 376, is superseded.

DRAFTING INFORMATION

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